

Claimant received severe disabling injuries in a single truck accident on May 2, 1997. The accident occurred at 7:30 p.m. on Interstate 70, between Junction City, Kansas, and Abilene, Kansas. At the time of the accident, claimant was operating respondent's truck and was traveling westbound on Interstate 70. Claimant lived in Solomon, Kansas, which is located west of Junction City between Abilene and Salina, Kansas, just south of Interstate 70.

Claimant was employed by the respondent to service certain residential and commercial accounts on a monthly basis in his geographical area. Claimant's home in Solomon, Kansas, was his point of origin from where he commenced his employment activities for the respondent, and where he concluded those activities each evening after he finished certain paperwork that was required by the respondent.

On the day of the accident, claimant drove the company truck to the branch office located in Topeka, Kansas, to attend a safety meeting that started at 8:00 a.m. After the meeting, claimant then drove to Manhattan, Kansas, and serviced at least two accounts, one from 10:30 a.m. to 10:45 a.m. and the other from 10:45 a.m. to 11:05 a.m.

Following the servicing of those accounts, claimant testified he went to Wildcat Creek Sports Complex located in Manhattan, Kansas, and participated for approximately one hour in a hole-in-one golf contest. Thereafter, he drove to McDonald's in Manhattan, Kansas, and ate lunch. Claimant cannot remember anything following his lunch until he regained consciousness the next day at the University of Kansas Medical Center in Kansas City, Kansas. There is no evidence in the record to account for claimant's activities between the time he finished lunch at McDonald's and 7:30 p.m. when the accident occurred. The last evidence that claimant performed any work for the respondent is the servicing of the last account in Manhattan at 11:05 a.m.

The respondent argues that claimant failed to meet his burden of proving that the truck accident arose out of and in the course of his employment with the respondent. The respondent contends that claimant had the burden to prove he was in the service of the employer at the time the accident occurred. The respondent argues claimant failed to produce evidence that he performed any work for the respondent after 11:05 a.m. and before the accident occurred at 7:30 p.m., some eight-and-one-half hours later. The respondent asserts that a period of eight-and-one-half hours without evidence of working for the respondent is a substantial deviation and constitutes an abandonment of employment.

The claimant argues the Administrative Law Judge's preliminary hearing Order should be affirmed by the Appeals Board. Claimant asserts that claimant's accident occurred on the direct route required for claimant to travel to his home from the accounts he serviced in Manhattan and from the branch office in Topeka, where he had been required to travel that morning for a safety meeting. The Administrative Law Judge cited the case Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995), as controlling.

The Appeals Board finds that even if claimant deviated from his employment for a substantial period of time, he returned to the employment relationship once he was on the direct route home. 258 Kan. at 284.

The Appeals Board concludes, at this juncture of the proceedings and with this record of evidence, the Administrative Law Judge's preliminary hearing Order, that found claimant suffered an accidental injury that arose out of and in the course of his employment while employed by the respondent, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order, dated October 9, 1997, entered by Administrative Law Judge Floyd V. Palmer should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Rex W. Henoch, Lenexa, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director